REMARKS/ARGUMENTS

The Final Office Action dated January 27, 2004 has been received and its contents carefully considered. Claims 1-26 are pending. Claims 1-26 have been rejected. Claims 1, 3, 4, 6, 10-11, 13, 15, 18, and 20-21 have been amended. Reconsideration and withdrawal of the outstanding rejections are respectfully requested in view of the following remarks.

SPECIFICATION

The specification has been amended to reference newly added FIG. 3. No new matter has been added.

DRAWINGS

FIG. 3 has been submitted which depicts the method steps of the present invention. It is believed that the drawings are in compliance under 37 C.F.R. §1083(a). No new matter has been added.

CLAIM OBJECTIONS

Claims 1, 6, 10, 15 and 18 objected to because of informalities. The aforementioned claims have been thoroughly reviewed and amended accordingly. It is believed that claims 1, 6, 10, 15 and 18 are in compliance.

CLAIM REJECTIONS – 35 U.S.C. § 112

Claims 1-26 were rejected under 35 U.S.C. §112, first paragraph as failing to comply with the enablement requirement. Independent claims 1, 10 and 18 have been amended and are believed to comply with the enablement requirement. Claims 2-9, 11-17 and 19-26 are further believed to be in compliance with the enablement requirement in accordance with their respective parent claims.

Claims 1-26 were rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Amendments have been made to the claims in order to clarify the subject matter of the present invention. Hence, claims 1-26 are believed to be in compliance.

CLAIM REJECTIONS – 35 U.S.C. § 103(a)

Claims 1, 2, 6, 10-19 and 22-24 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Dutton, et al.* (U.S. Patent No. 4,701,415) in view of *Hatai* (JP Publication No. 08-233770 and further in view of *Cao* (U.S. Patent No. 6,279,377). Without conceding the propriety of the rejection independent claims 1, 10, and 18 have been amended. It is respectfully submitted that *Dutton, et al.* does not teach, *inter alia*, a method of predicting failure of gas sensors in an incubator environment comprising "analyzing at least one gas sensor... adjusting a percentage gas sensor lifetime hours... normalizing the adjusted measurements... calculating a measurement for the sensor of a

percentage lifetime hours used... and displaying a warning" as recited in claim 1 and similarly in claims 10 and 18. Furthermore, the Examiner admits that Dutton does not provide a method for "testing/predicting the life of the sensors themselves" as recited by the present invention.

Hatai does not cure the deficiencies of *Dutton, et al.*, because it, too, does not provide a teaching of testing/predicting the life of the sensors as recited in claim 1 and similarly in claims 10 and 18. Furthermore, *Hatai* teaches away from the present invention as claimed. For instance, *Hatai* is designed with gas sensor elements to detect carbon monoxide (CO) gas whereas the present invention tracks O_2 and CO_2 values. Carbon monoxide is all together different from the operating environment of the present invention. As denoted, for instance, in Applicant's specification, the incubator chamber preferably houses biological cultures. Such cultures are conducive to being destroyed in an environment of carbon monoxide as taught by *Hatai.* Thus, the apparatus of *Hatai* would not only fail to work properly, but would also be destructive to Applicant's invention.

The addition of *Cao*, furthermore, fails to cure the deficiencies of *Dutton, et al.* in combination with *Hatai*, because it, too, does not teach testing/predicting the life of the sensors as presently recited in claims 1, 10 and 18.

In accordance with the M.P.E.P. §2143.03, to establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re: Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).* "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re: Wilson, 424 f.2d 1382, 1385, 165 USPQ 494 196 (CCPA 1970).* Since, the prior art fails to teach or fairly suggest the invention as claimed, Dutton et al, alone, or in

combination with *Hatai* and *Cao*, cannot be said to teach the invention as claimed. Hence, withdrawal of the rejection is respectfully requested.

Claims 2 and 6 depend from independent claim 1 and are patentable over the cited prior art for at least the same reasons as is claim 1.

Claims 11-17 depend ultimately from independent claim 10 and are patentable over the cited prior art for at least the same reasons as is claim 10.

Claims 22-24 depend ultimately from independent claim 18 and are patentable over the cited prior art for at least the same reasons as is claim 18.

Regarding claims 3, 4-5, 7-9, 20-21 and 25 through 26, no prior art has been cited against the aforementioned claims, hence, it is believed that the claims are allowable. The Examiner is further requested to indicate allowability of these claims.

WITHDRAWAL OF FINALITY

The Examiner is respectfully requested to withdraw finality of the previous Office Action. The Examiner has taken Official Notice that it is well known in the art to "determine the life of gas sensors in the most four percentage hours." However, this stance constitutes a new grounds of rejection since it pertains to a previously presented issue pertaining to the same prior art—Dutton/*Hatai*. The aforementioned issue also existed in the Office Action dated June 4, 2003, however, no Official Notice was given at that time. Thus, the grounds of rejection was not necessitated by any amendment by Applicant. Withdraw of the finality of the previous Office Action is respectfully requested.

CONCLUSION

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-2036.

Respectfully submitted,

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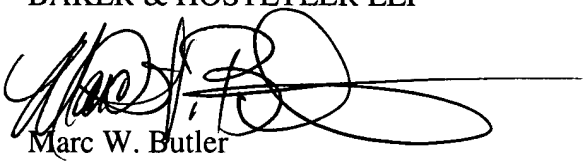

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